

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7044 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LARSEN & TOUBRO LTD

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 7044 of 2003
MR MANISH R BHATT for Petitioner No. 1
MS LILU K BHAYA for Respondent No. 1
..... for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 24/06/2003

ORAL JUDGEMENT

1. Rule. Ms.Bhaya, learned Counsel appearing for the respondents waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the

petitioner is one of the consumers of Gujarat Electricity Board. In the year 1995 as per the information of the Gujarat Electricity Board there was malfunctioning of the meter and, therefore, the letter dated 3-8-1995 was issued together with the bill for two months namely, for April, 1995 and May, 1995. The petitioner paid up the said bill. However, it is the case of the petitioner that in the year 1997 on account of some audit objection as to why the bill was not issued for six months which is the maximum period, another supplementary bill dated 8-7-1997 came to be issued for recovering the amount on the basis of the very malfunctioning of the meter for the period from 16-12-1994 to 6-6-1995. The petitioner made representation to the Board and it is also the case of the petitioner that the General Manager (Commercial) had entered into the correspondence with the Addl. Chief Engineer of the Gujarat Electricity Board that when the audit objection came to be raised the matter could have been properly explained and there are various correspondence showing that the petitioner did not accept the bill for six months, whereas the respondent Board insisted for the bill. Ultimately, on 13-5-2003 the respondent Board issued notice for recovery of the aforesaid amount of the disputed bill with the threat of disconnection and, therefore, under these circumstances the present petition is preferred by the petitioner.

3. I have heard the learned Counsel appearing for both the sides. It appears that there is no dispute on the point that there is no reference made under Section 26(6) of the Electricity (Supply) Act, 1910 (hereinafter referred to as "Act") to the Electrical Inspector. However, as per the Board initially such malfunctioning attracted bill for two months, whereas subsequently the stand of the Board is that it should have been for six months which is the maximum period. The case of the petitioner is that when the bill for two months was issued it was compared with the card and record of the Board and thereafter the bill for two months was issued and, therefore, it is the case of the petitioner that six months is the maximum period and it is not necessary that whenever there is a malfunctioning of the meter the bill is required to be issued for six months and the learned Counsel for the petitioner has relied upon the judgement of the Apex Court in the case of "Belwal Spinning Mills Ltd. etc. v. U.P. State Electricity Board and Another etc." reported in AIR 1997 SC, 2793.

4. The learned Counsel appearing for the respondents contended, inter alia, that the respondent Board also agrees that whenever there is a dispute regarding

malfunctioning of the meter the reference is to be made to the Electrical Inspector. However, the submission of the learned Counsel appearing for the respondents is that the petitioner could have approached to the Electrical Inspector by way of reference and it is not obligatory on the part of the Board to make reference to the Electrical Inspector. She submitted that if the reference is made by the Court upon the request of the petitioner which is now being made, the Board has no objection. The contention of the learned Counsel for the respondents is that earlier at no point of time the petitioner made request to the Board for reference of the matter to the Electrical Inspector, nor the petitioner has himself approached the Electrical Inspector.

5. It further appears and as submitted by Mr. Bhatt appearing for the petitioner, the case of the petitioner is that adjudication by the Electrical Inspector is a must and, therefore, it has been submitted that if the reference is made to the Electrical Inspector, the reference should have been made by the Board when the dispute comes to be raised by the petitioner. The learned Counsel appearing for the petitioner has also drawn the attention of the Court to the order dated 12-4-2002 passed by this Court in SCA No.7968/2000 in the case of "Denishchem Lab Ltd. v. GEB" and submitted that if the same course of action is adopted so far as the case of the petitioner is concerned, the petitioner would be satisfied for the present.

6. Having considered the above, before I consider the further aspects of the matter it is pertinent to note that in a more or less similar case ("Denishchem Lab Ltd. v. GEB"), at para 4 this Court has observed as under:

"4. On considering the rival submissions of the parties, I am of the view that the position of law is very clear that when there is any question arising regarding slow running of the meter it was obligatory to refer the matter to the Electrical Inspector. However, when the supplementary bill was issued for two days and because the amount was only for two days the said amount is paid by the petitioner. When the respondent Board issued bill for six months I do not find any justification in depriving the petitioner to have the adjudication by the Electrical Inspector as provided under Section 26(6) of the Act. As a matter of fact, if the officers of the Board have committed mistake then the Board should have taken steps against the

officer. However, nothing transpires in the affidavit that the Board had taken any departmental action against the officer concerned who did not issue bill for six months and by mistake issued bill for two days. If the mistake is committed, the same can not be the ground for depriving the petitioner from having the dispute referred to the Electrical Inspector. Mr. Dave submitted that since the dispute is not raised at the relevant point of time the petitioner cannot be allowed to raise the dispute at this stage. I cannot accept such submission because if the officers of the Board have committed mistake, then the petitioner cannot be put to disadvantage more particularly when the statute provides adjudication very well. Apart from that, whether the meter is running slow or not is a matter which can be examined by the expert and in the instant case the Electrical Inspector and therefore this Court cannot decide the disputed question and for appropriate adjudication of the dispute the matter will have to be referred to the Electrical Inspector."

7. Moreover, if the observations made by the Apex Court in the case of "Belwal Spinning Mills Ltd. etc. v. U.P. State Electricity Board and Another etc." reported in AIR 1997 SC, 2793 are considered and even upon plain reading of Section 26(6) of the Act, it appears that six months is the maximum period provided and the same is the outer limit. Therefore, it is not that in every case the bill must be issued for six months. It would vary from facts to facts. It may be that the Board may be claiming maximum period, but ultimately it will be for the Electrical Inspector to examine the matter and to render the decision and to provide for the period for which subject to the maximum of six months, the bill should be maintained or the recovery should be made for malfunctioning/slowness of the meter or any other defect of the meter.

8. In the present case, initially the Board upon the record available with it issued bills for two months. Thereafter, the case of the petitioner is that, on account of the audit objection, the bill came to be issued for six months' period which is the maximum period. Therefore, at one point of time, the Board on its own considered that the malfunctioning can be attributed for two months, but subsequently the Board stretched that malfunctioning for a period of six months. In my prima facie view, therefore, it becomes a case of

detailed examination of the facts as to whether that malfunctioning of the meter continued for a period of two months or for a period of six months as per the case of the Board, which is subsequently sought to be canvassed by issuing the supplementary bill in the year 1997. I am not expressing any final view on the said aspect, nor am I examining the said question in detail, because it will be ultimately for the Electrical Inspector to examine the case after considering record and after giving opportunity of hearing to the parties concerned.

9. The learned Counsel appearing for the respondent has raised the contention that there is no obligation casted upon the Board to make reference to the Electrical Inspector and in support of the said contention the learned Counsel has relied upon the judgement of this Court in the case of "Gitar Laboratories v. Ahmedabad Electricity C. Ltd." reported in 2001(2) GLR, 1478. If the aforesaid judgement is considered, the Court at the first instant took the view that the Ahmedabad Electricity Company is not a state within the meaning of Article 12 of the Constitution and, therefore, the observations of the Court can at the most be read in that context. Apart from the above, if the observations made by the Court at para 13 of the said judgement are considered, the same at the most can be read to the extent that the consumer can also approach to the Electrical Inspector for ventilating the grievance by having the reference under Section 26(6) of the Act. In the present case, Gujarat Electricity Board is a statutory Board of the State Government and it can hardly be disputed that Gujarat Electricity Board is not a state within the meaning of Article 12 of the Constitution. In my view, the obligation for implementation of the statute applies with more vigor to an agency which is the instrumentality of the State within the meaning of Article 12 of the Constitution. However, I find it proper to leave the matter at that stage, without expressing any opinion on the said aspect and the said question regarding the obligation on the part of GEB to refer the matter upon the dispute being raised by the consumer in respect to the supplementary bill is kept open.

10. In view of the aforesaid discussion, since there is no adjudication whatsoever by the Electrical Inspector and in view of the decision of this Court in the case of "Denishchem Lab Ltd. v. GEB" (supra), I find that the following directions shall meet with the ends of justice:

10.1 The petitioner shall make representation to the

respondent Board within a period of three weeks from today.

10.2 The respondent Board shall refer the dispute to the Electrical Inspector within one month from the date of receipt of the representation from the petitioner for deciding the issue as to whether there was malfunctioning of the meter or not.

10.3 After the dispute is referred to the Electrical Inspector, the Electrical Inspector, after giving opportunity of hearing to the petitioner as well as the respondent Board shall decide the same within a period of three months from the date of receipt of such reference and until the Inspector decides the reference, the statement made by the learned Counsel for the respondents pending the petition of not to enforce the recovery shall continue.

10.4 It is clarified that the Electrical Inspector shall decide the matter independently on the basis of the material available with him after giving opportunity of hearing to both the parties concerned and it is further clarified that both the parties shall be at liberty to challenge the decision of the Electrical Inspector in accordance with law.

11. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. There shall be no order as to costs.

24-6-2003 (Jayant Patel, J.)

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